The Cramdown

Tampa Bay Bankruptcy Bar Newsletter — Fall 2000

The President's Message

By John D. Emmanuel

LIFE IS TOO SHORT

I come from a family of lawyers (six at last count). It dawned on me recently, though, that while I on occasion take my children to the office or to court, I have not encouraged them to consider the practice for their own future. When I pondered why, I came to the conclusion that although the practice is at times very challenging and rewarding, it is also marred by frequent hassles which can quickly ruin an enjoyable day. What is there to do about this?

Take the high road. Remember why you chose this profession. Don't get bogged down. Life is too short. Here are some examples.

1. Celebrate your victories. How many times have you worked for days preparing for a trial or contested hearing, and prevailed, and by the middle of the next week you are so deep into your next project that you hardly remember you even had a big win? We should savor our successes. Take your client out for a victory dinner or drink. (Maybe they will even pick up the tab). Take a day off to decompress. Tell war stories. You earned it.

2. Avoid annoying clients. We all have them. A client who calls with an emergency, wants your home number, does not want to give you a retainer, wants to ghost write nasty letters for your signature, won't listen to your advice, and then doesn't pay your bill. What would you do? As Barney Fife would say, "nip it in the bud". You intuitively know who they are after only a few interactions with them. Trust your instincts and don't take the case, or if you already have, tell them you are not well suited for each other and they should find new counsel. Then spend the time you just saved with your family and friends.

3. Give fellow attorneys the benefit of the doubt. Our bankruptcy bar is, with very few exceptions, comprised of lawyers we know and trust. If you happen to have never dealt with your opposing counsel before, and they need an extension or some other professional courtesy that doesn't affect your client's

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Inside This Issue

***The Cramdown* can be accessed via the internet at** www.flmb.uscourts.gov

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case, give it to them. They will usually be appreciative and will reciprocate at a later date. If they don't, you will remember it and it will be their loss down the road.

4. Take a pro bono case. For the last few years, I have made a cash donation towards legal aid in lieu of personally handling a pro bono case. While monetary contributions are much needed, it is a somewhat sterile way to provide pro bono help. This year I have decided to sign up with our own growing pro bono program headed by Patrick Smith. Participants are called upon only once a year to assist a pro bono debtor. They will appreciate your help and you will have the satisfaction of having helped someone in need. (Patrick's number is (813) 229-2221 ext. 216.)

The practice of law is very rewarding. And if we can all remember why we chose the profession while avoiding some of its frustrations, the practice will be even more enjoyable for all of us. After all, life is too short. And yes, that is an old photo. But that proves my point, doesn't it?

Additional copies of the 1999 - 2000 Membership Directory can be purchased for a nominal fee.

Cost: $5.00, plus $1.00 for postage.

Contact: Sandy Owens
Morse, Berman & Gomez, P.A.
400 N. Tampa St., Suite 1160
Tampa, FL 33602

Please make all requests for additional copies of the directory in writing to Ms. Owens.

A Message From the U.S. Trustee

By T. Patrick Tinker

PETITION PREPARER ENJOINED AND SANCTIONED

On May 23, 2000, United States Bankruptcy Judge Alexander L. Paskay entered a permanent nationwide injunction against Deborah Dolen, a.k.a. Deborah Barwick and Deborah Harvey. Ms. Dolen is a bankruptcy petition preparer whose typical modus operandi has been to operate under the names of various corporate entities, for example AAA Family Services, Inc. and AAA Family Centers, Inc. Ms. Dolen would conceal the activities of herself and her associates in preparing bankruptcy documents, by failing to list the names of the individual preparers. When orders were entered sanctioning the corporations for violating 11 U.S.C. § 110 and for receiving excessive compensation, the orders would generally be ignored. If aggressive enforcement efforts were made against the corporation, a new corporation would eventually take over the petition preparer business.

Ms. Dolen initially operated primarily in the Tampa and Ft. Myers Divisions of the Middle District of Florida. She more recently expanded her activities in Florida and nationally over the Internet, selling "kits" to persons interested in becoming "independent paralegals." Independent paralegals are apparently paralegals who do not wish to operate under the supervision of counsel. Ms. Dolen considers herself a leader of the "independent paralegal movement" and is apparently the founder and president of Paralink International, Inc., which describes itself as a support organization for independent paralegals. The "kits" sold by Ms. Dolen and/or her companies contained software for the preparation of bankruptcy documents. The buyers of such kits were also recruited to prepare bankruptcy documents for Ms. Dolen and/or her corporations. At least initially, it appears that the new recruits received $25.00 in return for typing documents. Ms. Dolen and her companies, in turn, typically charged $225.00 to debtors for the document preparation.

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View From The Bench

By The Honorable Alexander L. Paskay

STUDENT LOANS - SOVEREIGN IMMUNITY

Prior to the Supreme Court's decision in Seminole Tribe of Fla. v. State of Fla., 517 U.S. 44, 134 L. Ed. 2d 252, 116 S.Ct. 1114 (1996) and its progenies, Alden v. Maine, 527 U.S. 706, 119 S.Ct 2240, 1999 U.S. LEXIS 4374, 144 L. Ed. 2d 636 (1999); Kimel v. Fla. Bd. of Regents, 120 S. Ct. 631, 2000 U.S. LEXIS 498, 145 L. Ed. 2d 522 (2000); there was no question that the Bankruptcy Courts had concurrent jurisdiction to entertain adversary proceedings which involved the dischargeability of student loans granted or guaranteed by a government entity. The fact of the matter is, there was a respectable number of reported cases prior to the 1998 amendment. There were a substantial number of adversary proceedings filed against an agency of a State or an agency of the Federal Government, mostly by debtors who sought a determination that the student loan obligation was not within the exception of §523(a)(8) of the Code. In re Shore, 707 F.2d 1337 (11th Cir. 1983); Hiatt v. Indiana State Student Assistance Comm'n., 36 F.3d 21 (7th Cir. 1994), cert. denied 513 U.S. 1154, 115 S.Ct. 1109, 130 L.Ed.2d 1074 (1995).

The 1998 amendment now provides that the only exception to the discharge of student loans is "undue hardship."

Although Seminole Tribe, supra, did not involve a bankruptcy case and the power of Congress to grant jurisdiction under the commerce clause of the Constitution, some courts wasted no time in declaring the 1994 amendment of Sec. 106 of the Code, which abolished the defense of sovereign immunity, unconstitutional. This approach of the courts was not limited to direct action against the Federal Government, especially State governments seeking recovery of money or property, but also to suits by Debtors who sought a determination of dischargeability of student loans. In re Cobb, 196 B.R. 34 (Bankr. E.D. Va. 1996). Thus, Debtors are increasingly confronted with the sovereign immunity defense in student loan dischargeability proceedings.

Attempts have been made by counsel to overcome the defense of sovereign immunity by relying on Ex Parte Young, 209 U.S. 123, 52 L. Ed. 714, 28 S.Ct. 441 (1908). In Ex Parte Young, the Supreme Court held that suit against State officials in their individual capacities to enjoin a continuing violation of Federal law was not barred by the doctrine of sovereign immunity. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 269, 138 L. Ed. 2d, 438, 52 L. Ed. 438, 117 S.Ct. 2028 (1997). The reliance on Ex Parte Young did not find a hospitable reception by the courts generally, although some courts relied on the doctrine in rejecting the defense of sovereign immunity in student loan cases. In re Schmitt, 220 B.R. 68 (Bankr. W.D. Mo. 1998). But see In re Stout, 231 B.R. 313 (Bankr. W.D. Mo. 1999).

It is often assumed that an entity involved in litigation in the Bankruptcy Court is automatically clothed with the doctrine of sovereign immunity or with the protection accorded to States by the Eleventh Amendment of the Federal Constitution if it appears that the creditor has some involvement with the Government. This is far from the truth. As noted in Lake County Estates, Inc., v. Tahoe Reg'l Planning Agency, 440 U.S. 391, 401; 99 S. Ct. 1171, 1177, 59 L. Ed. 2d 401 (1979) the Supreme Court held that a "slice of the State power" without more is insufficient to invoke the protection. It is clear that before an entity is entitled to be treated as "sovereign" for the purpose of the Eleventh Amendment protection the entity must be an "arm of the State." Thus, political subdivisions of the State such as municipal corporations or counties are not entitled to the Eleventh Amendment protection. Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L. Ed. 2d 673 (1980); Mt. Healthy City Sch. Dist. Bd. of Educ. Boyle, 429 U.S. 274 , 97 S.Ct. 568, 50 L. Ed. 471 (1977).

Several Circuit Courts that considered this issue of whether an entity involved is in fact an "arm of the State" developed a multi-prong test. Duke v. Grady Municipal Schools, 127 F.3d 972 (10th Cir. 1997); Mancuso v. New York State Thruway Authority, 86 F.3d 289 (2d Cir. 1996); Hadley v. North Ark. Community Technical College, 76 F.3d 1437 (8th Cir. 1996); Christy v. Pennsylvania Turnpike Commission, 54 F.3d. 1140 (3d Cir. 1995); Harter v. C.D. Vernon, 101 F.3d 334 (4th Cir. 1996); Metcalf & Eddy v. P.R. Aqueduct & Sewer Auth., 991 F.2d 935 (1st Cir. 1993).

While some of the factors, which the Circuits considered, vary to some degree they are basically derived from the Lake County Estates, Inc., case, supra.

For instance, in the case of Metcalf & Eddy, supra, the Court considered the following factors:

(1) Whether the State immunized itself from all responsibility of the omissions or acts of the agency.

(2) Whether the agency is financially able to satisfy judgments without direct State participation or guar-

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View From The Bench (Continued from page 3)

antees.

(3) Whether the agency is incorporated and operates as a corporation.

(4) The extent, if any, of the control of the State of the agency's operation.

(5) Whether the agency performs a governmental function as distinguished from a proprietary function.

(6) Whether the agency has the power to sue and could be sued and enter into contracts in its own name.

(7) Whether the property owned by the agency is or is not subject to taxation.

If one considers the principle underlying the doctrine of sovereign immunity one cannot help but to conclude that the ultimate question is whether a judgment obtained against a State will have to be satisfied by using public funds. While this factor is not considered the determinative, it has been considered by a majority of courts the most significant. Hess v. Port Auth. Trans-Hudson, 513 U.S. 3046, 115 S.Ct. 394, 404, 130 L. Ed. 2d 145 (1994).

Student Loans may be obtained from several different sources. Direct loans from institutional lenders or from private educational institutions do not bring into play the doctrine of the sovereign immunity or the Eleventh Amendment. Most student loans, however, while it might be originally granted by private sources, are usually guaranteed by an agency of the government. In these instances in order to determine whether the particular agency is an "arm of the State" it is necessary to consider the statute which created the particular agency. In the case of Metcalf & Eddy, supra the Court stated regarding P.R. Laws Ann. Tit. 22, §144, "The statute erects a wall between the agency's appetite and the public fisc." Thus, the Puerto Rico Aqueduct and Sewer Authority was not an "arm of the State" for Eleventh Amendment purposes. Metcalf & Eddy, supra.

Also typical of such a Statute which creates an agency is P.S. Sec. 5104 (3) which established the Pennsylvania Higher Education Authority (PHEA) who guarantees student loans. This Statue authorized the PHEA to borrow monies by issuing notes bonds and other evidences of indebtedness of the agency and if PHEA defaults the bondholder and creditors can only look to the agency for recovery. Under the Statute, the debts of the agency are not the debts of the State and the agency has no power to pledge the credit or the taxing power of the State. More importantly, in the event the student defaults on the loan and obtains a hardship discharge PHEA is required to repurchase the loan from the lender under its guaranty and the debt cannot be enforced against the State treasury.

Guaranteeing agencies contended from time to time that even though the State is not responsible for its financial obligations, they receive funds from public appropriations which is sufficient to confer the Eleventh Amendment protection. Isolated State funding of dedicated projects and limited appropriation of public funds to supplement the funding capability of the agency has been found insufficient to invoke the protection of the Eleventh Amendment. Mancuso v. New York State Thruway Auth., supra.

Even if the Statute did not establish a blanket disclaimer of all liability and the legislature may, under particular circumstances, provide funds to cover judgments against the agency on its guaranty, such discretionary subsidies are equally insufficient to invoke the doctrine of sovereign immunity. Chrystie v. Pennsylvania Turnpike Comm'n, supra. In sum, it is an agency which receives public funds but its operation does not create a financial exposure of the State. Based on the same principles, school districts, cities and towns often rely on State funds to supplement their operating budgets. Their ability to raise funds on their own to satisfy judgments remove them from the protection of the doctrine.

In addition to the State's financial exposure, the courts also consider other factors, albeit less significant, in considering whether the agency is, in fact, an "arm of the State." For instance, whether or not the Statute establishing the agency authorizes the agency to enter into contracts to guarantee student loans and to participate with lending institutions under Title IV of the Higher Education Act of 1965 as an eligible lender.

The structure independence is also a factor which is frequently considered when the question of sovereign immunity defense is raised. In the case of PHEA it has its own independent corporate existence with its own corporate powers. The funds raised by PHEA through sale of bonds, contract investments, are segregated and are under the complete control of the Board of Directors of PHEA. 24. P.S. Sec 5104 (3).

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Clerk's Corner

A Day in the Life of a Deputy Clerk

By Cheryl Thompson and Deputy Clerks

As most of you are keenly aware, the Middle District of Florida is one of the busiest districts in the country with respect to bankruptcy cases. You may know about the 41,602 new cases filed in the Middle District in 1999. You may also know that as of June 1999, we were third in the nation in number of cases filed. What you may not know is how the clerk's office handles all of the paper that those filings and the related matters connected with them generate. This article may shed some light on that process and provide some helpful tips for use in your bankruptcy practice.

The bankruptcy court is located on 6 different floors in the Federal Courthouse. Paper filed with the bankruptcy court is physically transported via public elevator between the various floors so it presents special logistical problems. The burden of receiving, processing, and distributing this paper falls largely on 60 people in the clerk's office; 54 case managers, 4 intake staff, and 2 mailroom staff.

The clerk's office receives petitions, adversary proceedings, and papers through two routes, intake and the mailroom. The intake staff is responsible for everything that comes across the counter. Between the hours of 9:00 a.m. and 4:30 p.m. on any given day intake receives and processes approximately 73 new petitions. Not surprisingly, many of these are filed in the last hour of business.

The intake staff opens the case in the computer and generates the case number and judge assignment. If the petition is a case filed under Chapter 11 intake staff calls a team leader to pick up the case so that first day orders can be generated by the case manager. Otherwise, the intake staff segregates petitions for pick up by individual team leaders at the end of the day.

The intake staff also receives adversary complaints and other papers and pleadings filed over the counter. Each paper is date and time stamped and set aside for later pick up. The intake staff also processes petitions and adversary proceedings filed through the mail as well as any papers that require payment of a fee.

The mailroom is the second route by which the clerk's office receives petitions and papers for the bankruptcy court. Two clerks are responsible for both incoming and outgoing mail. On a typical day, the mailroom staff checks in and sorts through approximately 700 letters and 160 oversized envelopes, although the volume often doubles on a Monday.

The mailroom staff opens expedited mail, oversized envelopes (containing petitions) and chambers mail first, and then opens all of the remaining mail. Each paper is stamped with the date of receipt. The mailroom staff also periodically picks up the papers received by intake throughout the day.

The mailroom staff scans each paper received by mail or through intake to determine where it needs to be routed. The mailroom staff delivers petitions, adversary proceedings, and papers requiring fees to intake. The mailroom staff distributes all other papers into individual mail slots for pick-up by case managers.

The mailroom staff also mails out approximately 500 pieces of mail each day. Service of administrative orders and notices by the Bankruptcy Noticing Center (BNC) has substantially decreased the volume of outgoing mail processed by the mailroom in the last two years.

The case manager is the lynchpin for the processing of petitions, adversary proceedings, and papers received by the bankruptcy court. Each case manager is assigned a range of digits and is responsible for all cases and related adversary proceedings that fall within that range. On average, a case manager has a caseload of approximately 425-450 cases of all chapters and is responsible for the overall administration related to those cases.

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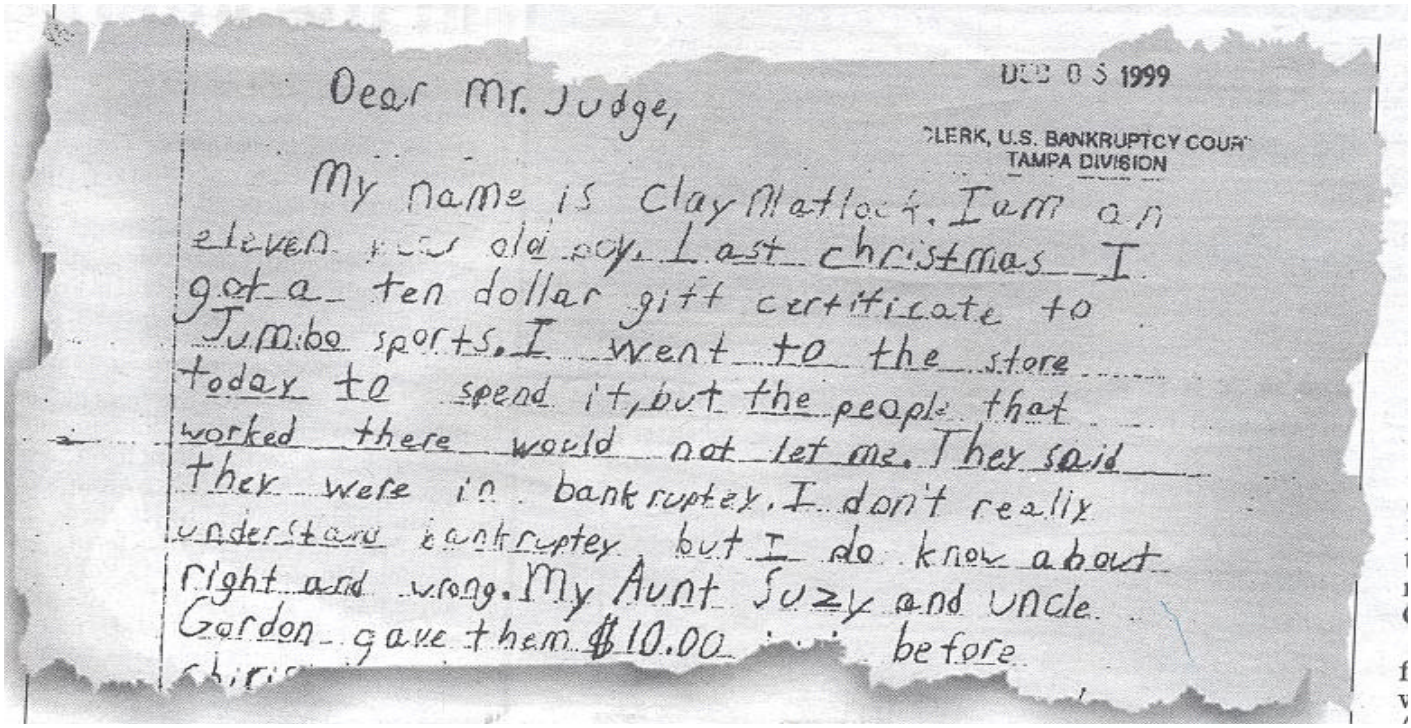
Judge Corcoran's Good Deed Does Not Go Unnoticed

The following article appeared in the August 21, 2000 edition of the St. Petersburg Times and is reprinted by permission of the St. Petersburg Times and its author, Mark Albright.



Sometimes the innocence of youth can pierce the rules and regulations that attempt to preserve order in society.

Such was the case with 11-year-old Clay Matlock. The Philadelphia, Tenn., boy was confronted with the complexities of JumboSports Inc.'s bankruptcy case 600 miles away in Tampa when he tried to use a $10 gift certificate.

By the time he went to a store, liquidators had taken over. Their job was to sell the sporting goods chain's inventory to pay off creditors. They refused to redeem gift certificates, handing out claim forms to line up with other creditors owed millions.

Matlock's uncle offered to buy a bow-and-suction-cup-arrow set that the middle school student had picked. But the kid said no on principle.

In a handwritten letter addressed "Dear Mr. Judge," young Matlock told U.S. Bankruptcy Judge Timothy Corcoran how he felt wronged.

"I have studied about courts and judges in school and I know that people who steal go to jail and that if you catch them with my money then I will get it back," he wrote. "Will you please give me the names of the people who stole my money and the address of the jail you send them to so that I'll at least know that they are being punished?"

The judge responded with a three-page letter explaining how bankruptcy works and why it beats the debtors prisons of old England. "If a business fails because of honest mistakes like JumboSports, no one goes to jail."

Enclosed, however, was a $10 money order the judge paid for from his own pocket.

Last week, the company's creditors and Corcoran approved full refunds for more than 1,500 other JumboSports gift certificate holders.

"I never expected an answer," said Clay, who nine months after the judge wrote him still has the $10 stashed in his savings account. "I haven't seen anything I want to buy yet."

-- MARK ALBRIGHT

Kathleen S. McLeroy, a shareholder with Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., was elected chairwoman-elect of the University of Tampa board of counselors. She also recently was named to the executive committee of the Florida Bar Foundation Board in Orlando.

David E. Hicks, formerly Chief Litigation Counsel with Feinberg, Isaak & Smith a/k/a The Debt Relief Legal Centers, has joined Dennis LeVine & Associates. David formerly served as Assistant General Counsel with the State of Florida, Department of Revenue, and as an Assistant Public Defender.

Donald A. Workman, a partner with Foley & Lardner, was recently appointed vice chair of the Florida Bar CLE Committee for the 2000-2001 term.

John Emmanuel has been appointed secretary of the Business Law Section of the Florida Bar. He is a shareholder in the Tampa office Fowler, White, Gillen, Boggs, Villareal and Banker.

John M. Guard has joined Holland & Knight's Bankruptcy and Creditor's Rights department. John is a recent graduate from Tulane Law School, where he received his JD Summa Cum Laude. He received his Bachelor of Arts degree from The Florida State University.

Mark J. Wolfson, a partner at the law firm of Foley & Lardner, was recently appointed chair of the Financial Services Committee of the Florida Bar's Business Law Section. In this capacity, he will serve on the Executive Council of the business law section for the 2000-2001 term. Also, Mark recently gave a presentation to the Central Florida Bar Association on proposed changes to Article 9 of the UCC, focusing on the default and remedies section.

Please contact Amanda Hill with any news concerning TBBBA members. (813) 223-7000 ext. 143, (813) 229-4133 (fax) or ahill@carltonfields.com.

Calendar of Events

Date	Event	Time	Location
Nov. 14, 2000	**Federal, Civil, Bankruptcy and Local Rule Amendments** (Including Mandatory Disclosures Effective Dec. 1st) Judge C. Timothy Corcoran, III and Roberta Colton (1 Hour of CLE applied for)	12:00 p.m.	Hyatt Regency
Dec. 12, 2000	**Holiday Social**	5:30 p.m.	Hyatt Regency
Jan. 9, 2001	TBA		
Feb. 13, 2001	**Valentine's Day Special: Sex with Clients and Other Relationships Presenting Ethical Dilemmas** Professor Mark Yochum (Yep, that same funny guy who visited us last winter!) (1 Hour of Ethics CLE to be applied for)	12:00 p.m.	Hyatt Regency

CLE COMMITTEE NEEDS YOU!

The CLE Committee could use your help with our monthly meetings and CLE programs. We are still in the planning stages for the January, March, and April meetings and the annual half-day case law update as well as the semi-annual half-day seminar for paralegals. We also need to form a committee to plan the annual dinner and its theme. Please call Cathy McEwen (209-5017) or David Tong (224-9000) today to get involved.

The Florida Bar Thanks Local Lawyer For Pro Bono Efforts

July 26, 2000

Mr. David Brett Marks
Post Office Box 707
Tampa, Florida 33601-0707

Dear Mr. Marks:

I recently had the pleasure of receiving a letter from ***Jane Doe**** praising you for the work you did with regard to the handling of her case through Tampa, Florida's Bay Area Legal Services. Our current president, Herman Russomanno, asked me to respond and to thank you for the exemplary services you rendered on her behalf.

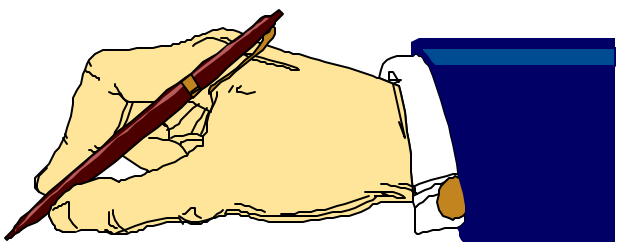
It is always refreshing and rewarding to hear of the good work performed by a Florida attorney. The Florida Bar thanks you for serving the public in a way that we can all be proud. Your work and actions reflect a positive and professional image to the public, and are steps toward achieving the Bar's goal to improve the image of the legal profession. We thank you for your dedication and hard work.

Cordially yours,

John F. Harkness, Jr.
Executive Director

cc: ***Jane Doe****
Tampa Bay Area Legal Services

* Client name omitted.



Senator Bob Graham Responds To Position On Proposed Bankruptcy Legislation

June 8, 2000

Mr. Dennis J. LeVine
Dennis LeVine and Associates, PA
103 South Boulevard
Tampa, Florida 33606

Dear Dennis:

Thank you for contacting my office regarding bankruptcy reform.

The Senate version of the Bankruptcy Reform Act of 1999 (S. 625) was introduced by Senator Charles Grassley on March 16, 1999. The full Senate passed a version of this bill (H.R. 833) by a vote of 83 – 14 on February 2, 2000. I did not vote in favor of the bill because the homestead exemption cap, which was included in the legislation, violates states' rights. This provision imposes a $250,000 nationwide cap on the amount of home equity that bankrupt individuals can shield from creditors.

Under the House of Representatives version of the bill, states would be able to choose whether to "opt out" of this requirement by passing legislation in their state legislatures. Each state has different homestead exemptions, and Floridians, under current law, can exempt their entire residences from the claims of creditors. It is unfortunate that the Senate's final legislation bankrupts the idea of states' rights. Florida -- not Washington -- should have the authority to establish its own homestead policy without federal interference.

The House of Representatives passed a version of this legislation on May 5, 1999, by a vote of 313 – 108. Members of the Senate and the House will meet to reconcile the differences between the two different versions of the legislation. Because I am not a member of the Judiciary Committee, I will not have the opportunity to sit on this conference committee. Nonetheless, I will be pursing efforts to convince the conferees to adopt homestead provisions that ensure the right of states to determine appropriate policy in this matter.

Equitable bankruptcy reform should maintain fairness and financial accountability within our legal system. Be assured that I will continue to keep your views in mind as Congress works to complete this legislation.

Thank you for sharing your views on this important matter. I look forward to hearing from you in the future on issues facing our nation.

Sincerely yours,

Bob Graham

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Office of the Clerk
Sam M. Gibbons United States Courthouse
801 N. Florida Avenue
Tampa, Florida 33602-3899

September 25, 2000
PUBLIC NOTICE

Acting on the advice and recommendations of its Local Rules Lawyers' Advisory Committee, the United States Bankruptcy Court for the Middle District of Florida has preliminarily approved amendments to the Court's Local Rules. The amendments are to be effective on *December 1, 2000*.

The full texts of the amendments together with the Notes of the Advisory Committee that thoroughly explain the amendments and the reasons for them, are also available on the Court's Website, **http://www.flmb.uscourts.gov/**.

The Court invites the comments and suggestions of members of the Bar and the public. The Court wishes to take any comments into consideration before taking final action on these amendments. The deadline to make comments is ***November 20, 2000***.

Clerk's Corner (Continued from page 5)

The case manager completes the opening procedure for new cases and dockets all papers filed in a case or adversary proceeding. The case manager reviews each petition, adversary proceeding, and paper to ensure that it is consistent with all procedural requirements. The case manager prepares procedural and administrative orders for the Judge's signature. The case manager also issues summons, maintains the file, prepares the file for hearing, and tracks papers arising out of hearings or appeals.

In addition, the case manager ensures that service of each paper has been made according to the federal rules of bankruptcy procedure and that every order or notice of the bankruptcy court is sent to the appropriate parties.

Most importantly, the case manager reviews every paper filed for content to determine the next appropriate action that needs to be taken on that paper. Depending on the nature of the paper filed, the case manager may forward the paper to the courtroom deputy to set for hearing, to chambers for consideration, to the financial officer to approve payment, or back to the sending party.

The case manager receives many of these papers back for further processing. The case manager may need to pull a file, prepare an order, docket an order, or perform a myriad of other tasks before the papers can be filed and served.

The case manager also performs a public function by communicating with pro se parties and counsel on procedural and administrative matters in particular cases or proceedings. The case manager has statutory limitations, however, on what he or she can and cannot say and do.

Although this article cannot fully express the level of sophistication and complexity required by the case manager in performing his or her duties, some statistics may give an appreciation for the sheer volume of work that is done. In August 2000, Tampa case managers opened 1685 new cases and 69 new adversaries. They closed 1892 cases, made 38,444 docket entries and registered 6,466 claims.

Counsel can assist the clerk's office in their efforts to expeditiously and promptly process papers by remembering the following tips:

1. Be prepared to wait at intake until all papers have been confirmed as received by the staff. Don't drop off bulk filings in a sealed envelope and head out the door. It violates clerk's procedure and may prejudice your clients.

2. Remember that it is the case manager and not intake staff that issues the summons in an adversary proceeding. To avoid delay in the issuance of your summons make sure that the adversary cover sheet is completely filled out and that you have provided a sufficient number of summons. If you need the summons quickly, make a written request that the case manager contact you upon issuance of the summons to arrange pick up.

3. Don't file papers in a case that is on for hearing on the day of that hearing. The papers will not be in the file when the case is called and there will be a delay if they need to be retrieved. File the papers in open court at the hearing or obtain a receive stamped copy of the papers as you file them.

4. Remember that most papers pass through multiple hands before reaching the court and can take up to 48 hours. The initial recipient of the papers does not read them in depth. If the papers you are filing are time sensitive, e.g., emergency motions, papers filed with a certificate of necessity, requests for expedited handling to take off a hearing, etc. take all necessary steps to alert the staff that the papers require priority handling. If it is truly a priority matter, don't rely on written instructions. By the same token, don't abuse the privilege by asking for priority processing when it is merely a matter of the party or counsel's convenience.

5. Always include the complete case or proceeding number on the front page of any paper submitted to the bankruptcy court. Filing papers with missing, incomplete or incorrect numbers will significantly delay the processing of those papers because individual research and processing is required to determine which case or proceeding the papers relate to. This processing is very time con-

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U.S. Trustee (Continued from page 2)

As the petition preparer business has expanded nationally, the concealment of individual preparers' activities has continued. Indeed, Ms. Dolen and her associates established a website accessible by the public that expressly encourages concealment efforts by petition preparers as well as the debtors themselves. At http://www.para-link/LAWFIRM/law/street.htm, the website decries the efforts of trustees attempting to monitor the activities of paralegals under the 1994 amendments to the Bankruptcy Code (which established 11 U.S.C. § 110), and states that, irrespective of such legislation, there "is no law saying that you have to recall who helped you." The website adds that petition preparers who do not list their identity and who have customers "with bad memories ... fare the best."

The final judgment entered by the Honorable Alexander L. Paskay specifically enjoins Deborah R. Dolen. The Court held that Ms. Dolen "is hereby permanently enjoined from participating in any way whatsoever, directly or indirectly, in the preparation of bankruptcy petitions or other bankruptcy documents to be filed for individuals other than herself in any federal court of the United States." This injunction follows earlier sanctions orders entered by Bankruptcy Judge Paskay against corporate entities controlled by Ms. Dolen. Chapter 7 Trustee Diane Jensen was particularly active in bringing those matters before the Court. In addition, the Honorable C. Timothy Corcoran had issued several orders holding Ms. Dolen jointly and severally liable with AAA Family Centers, Inc. for $14,000.00 in sanctions, based on the latter corporation being a mere instrumentality used by her in her continuing, willful non-compliance with the requirements of 11 U.S.C. § 110.

A new corporation, The Liberty Group of America, Inc., has apparently taken over the business of AAA Family Centers, Inc. In contrast to the prior corporations established by Ms. Dolen, she is allegedly not an officer of The Liberty Group of America, Inc. Nonetheless, she has reportedly described herself as a "consultant" to the new corporation. Anyone learning of specific actions by Ms. Dolen in connection with any bankruptcy cases, whether as a “consultant" or otherwise, is encouraged to contact the Office of the United States Trustee in Tampa.

An Update From the U.S. Trustee

CHAPTER 13 DEBTOR CONVICTED AND SENTENCED

In the 1999 Winter edition of *The Cramdown*, the United States Trustee reported that Chapter 13 debtor, MARK T. GRAFFEY had been indicated by the Grand Jury for income tax evasion and bankruptcy fraud. **Update:** After a four day trial, a federal jury sitting in Tampa found Graffey guilty of two counts of tax evasion and one count of bankruptcy fraud on April 14, 2000. Thereafter, on July 14, 2000, United States District Court Judge Susan Bucklew sentenced Graffey to two years in federal prison followed by two years supervised release.

Evidence adduced at trial proved that Mark T. Graffey had evaded his true income tax liability for tax years 1994 and 1595 by filing false income tax returns which significantly understated his income. Further, he had not filed federal tax returns from 1982-1995. When contacted by the Internal Revenue Service, Graffey filed for bankruptcy protection on three separate occasions to prevent the IRS from taking action against him. Moreover, Graffey attempted to conceal his assets from the IRS by transferring money to a third party and to a fictitious trust.

In each of the three bankruptcy cases, Graffey intentionally failed to list all of his assets, including bank accounts, on his bankruptcy schedules. Further, during the first chapter 13 case, he provided the bankruptcy court with copies of false income tax returns which stated that he had earned no income and owed no taxes for the tax years 1986 through 1993. At trial, Graffey admitted that he had earned income during those years.

The case was investigated by the Internal Revenue Service with referral of the bankruptcy fraud by the Tampa Office of the United States Trustee. Assistant U.S. Attorney Ken Lawson prosecuted the case.

View From The Bench (Continued from page 4)

PUBLIC PURPOSE

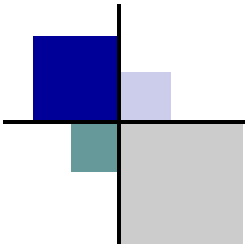
This is also a factor which is considered at times. The enabling Statute of PHEA states that it is a public corporation and a government instrumentality whose purpose is to "improve higher educational opportunities." 24 P.S. Sec 5101, 5102. Based on these factors one might contend that its operation is not proprietary but governmental, therefore, meets the requirement to be an "arm of the State." Of course, this is just one of the factors the courts consider and weigh against others more significant and such argument has rarely found a receptive ear. For instance, agencies which perform governmental functions such as providing water and sewer treatment services, oversight of public educational systems, operation of highway and turnpike systems, were not sufficient to find the particular agency to be an arm of the State. Metcalf & Eddy, supra; Chrystie v. Pennsylvania Turnpike Comm'n, supra.

WAIVER OF SOVEREIGN IMMUNITY

While it is generally accepted that a waiver in a case where there is a defense of sovereign immunity should not be lightly inferred, it is also true that there is no requirement that there be an express statutory waiver before the court may find that the governmental entity did waive the defense by conduct. Ever since Seminole, State colleges and universities have been invoking the defense of sovereign immunity when debtors sought a determination that a student loan is dischargeable based on undue hardship. Charles W. and Kay L. Huffine 2000 WL 267786 (Bankr. E.D. Wash. 2000). The debtors filed an adversary proceeding and in their complaint sought a determination that six student loans should be discharged based on undue hardship. All defendants except Washington State University (Washington State) consented to a decree declaring that their respective student loans are not excepted from the protection of the general discharge. Washington State, after having participated in discovery and other pre-trial matters, moved to dismiss the Complaint contending that it was an arm of the State and based on Seminole the Bankruptcy Court had no jurisdiction to entertain the suit filed against it. The Court rejected this defense and denied the motion to dismiss. The Court found that Under Title IV of the Higher Educational Act educational institutions loan federal funds to its students to assist them with their educational expenses. The "Student Loan Participation Agreement" under the Program signed by the participating institutions became involved in bankruptcy cases filed by the loan recipients. The Court noted that Premo v. Martin, 119 F.3d 764 (9th Cir. 1997) which involved a grant of federal funds under the Randolph-Sheppard Vending Stand Act found that the sovereign immunity defense was waived when the State Agency administering the program agreed to participate in arbitration to resolve any disputes which may arise between the agencies and the participants. In Premo there was no express statutory waiver. In Huffine, 34 C.F.R 674.49 which implements the provisions of the Higher Educational Act mandates the educational institution to file a proof of claim if the student filed a Petition for Relief under the Code unless the case is a no asset case. This regulation further provides that if the debtor commences an adversary proceeding alleging that the student loan should be discharged for undue hardship, the educational institution "must determine" if hardship exists.

In the case of In re Innes, 184 F.3d 1275 (10th Cir. 1999), the Court considered not just the statutory language but also the agreement of the parties and the governing regulations and, based on these, concluded the Kansas State University waived the defense. It should be noted that on March 27, 2000, the Supreme Court declined without comment a request to review Innes.

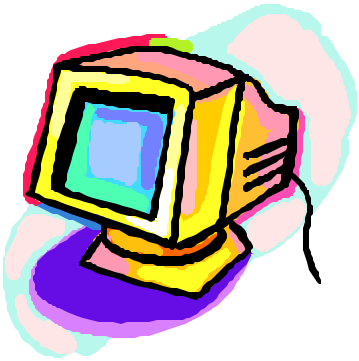
It appears from the foregoing that the Court will consider the provisions of the Statute and the implementing regulations, in addition to the extent of the educational institution's participation, in any adversary proceeding commenced by a debtor who seeks a determination of the dischargeability of a student loan, and it does not require an express statutory waiver before waiver can be found.



the Cramdown surfs the net

Websites for Bankruptcy Practitioners

By Cathy Peek McEwen



Rare is the bankruptcy lawyer these days who does not have access to the internet through a desktop PC. As a service to our association's members, *The Cramdown* will provide you tips on topical internet resources from time to time, and if you know some good sites, please share them with us.

Our Own Court's Website

Of course, the starting point for your internet bankruptcy resources should be the Middle District of Florida Bankruptcy Court's web site, found at www.flmb.uscourts.gov. At present, the entire site is free, but to access some parts of it, such as dockets, claims registers, the judges' hearing calendars, and 341 meeting schedules, you will need to register with Pacer to obtain an identification number and password. To obtain an ID number and password from the Pacer Service Center, call 1-800-676-6856 or register from the Pacer Home Page through our court's web site's Links Page. The web site also has links to our local rules, helpful drafting guidelines and sample forms of motions and orders by Judge Corcoran, and past issues of our very own newsletter, *The Cramdown* .

Bankruptcy Discussion Groups

The ROUNDTABLE mailing list is an open, unmoderated forum for use by bankruptcy professionals to pose questions and comments about bankruptcy-related issues arising in real-life situations, obtain legislative updates, and seek referrals to counsel in other jurisdictions. The main thrust of the discussions seems to be consumer issues, but business bankruptcy questions are also welcome. To subscribe, send an email to owner-roundtable@bankrupt.com.

Another discussion group, with a bit more of a balance between consumer and business bankruptcy issues, is run by bankrlaw@polecat.law.indiana.edu. As with the discussion group described above, bankruptcy professionals can pose questions about their cases and receive regular updates on legislative developments in Congress. It is not unusual to see a post from well known bankruptcy law academicians such as Harvard's Elizabeth Warren. Here's an example of a recent "thread" on a practical problem:

> **Q:** Does anyone know of any firms specializing in service of process on foreign (literally) entities? I have a complaint in an adversary action in Bankruptcy Court that I need to serve on a South American corporation.
>
> **A:** You might try APS International ("You or your staff will never spend more than 3 minutes arranging for process service...anywhere!"), 1-800-328-7171, fax 612-831-8150, in Minneapolis.

Daily Bankruptcy News and Offering of New Decisions

BKINFORMATION.COM bills itself as "The Source for Business Bankruptcy Information on the Internet." It provides links to daily headlines and news articles, daily summaries

(Continued on page 14)

Websites (Continued from page 13)

of newly rendered decisions, the Bankruptcy Code (three different sites, including one downloadable into Palm Pilot), federal procedural rules (bankruptcy, civil, appellate), the Uniform Commercial Code, Federal Rules of Evidence, bankruptcy courts' local rules, summaries of state collection laws and exemptions, bankruptcy courts' web sites, directories of judges, staff, clerks, and U.S. Trustees, official forms, discussion group archives, scholarly articles, and even bankruptcy employment opportunities. To receive the Daily Bankruptcy News and the site's links by email each day, go to http://bkinformation.com/DBNSubscribe.htm and fill in the information requested. If you do not receive an email confirming your subscription to the publication, contact the site at admin@bkinformation.com.

Just For Fun

Try www.rinkworks.com/dialect/ to convert your favorite web pages into several comic dialects. The Dialectizer takes text or other web pages and instantly creates parodies of them. For example, try the Elmer Fudd dialect on our court's web site and see how Judge Jenneman's name comes out!

Next issue: How to get instant email updates of new Chapter 11 filings in our court, ABI's Cracking the Code...and more!

Please send your favorite bankruptcy-related websites to *The Cramdown* by emailing Cathy McEwen at catmcewen@aol.com or cmcewen@akerman.com.

Clerk's Corner (Continued from page 10)

suming and is done after all of the priority and routine processing is complete.

6. Keep the bankruptcy court informed of all changes in service addresses in your case as they occur so that the matrix is up to date. Remember that counsel must file a notice of change of address or motion to substitute counsel in each case in which he or she appears to effect a change in the service matrix.

7. Finally, remember that the clerk's office is the link between the bar and the court. Be as courteous and considerate of the clerk's staff as you would be of the court itself. Your professionalism will be appreciated.

Behind on Reading Your Advance Sheets?

Quick Fix Available

The seminar materials from Judge Mary Davies Scott's Case Law Update From May 2000 are available for $25.00. This price includes a Tampa Bay Bankruptcy Bar Association edition of Matthew Bender's 2000 Collier Portable Code and Rules, a Special 11th Circuit Edition Collier Bankruptcy Case Update, and a 142-page Collier Bankruptcy Case Update by Lexis Publishing containing case digests by Bankruptcy Code section for significant cases decided within the last six months.

You may send a courier, along with a check in the amount of $25.00 made payable to the Tampa Bay Bankruptcy Bar Association, to pick up the package of materials, while supplies last, from:

Al Gomez
Morse, Berman & Gomez, P.A.
400 N. Tampa St., Suite 1160
Tampa, FL 33602

THE TAMPA BAY CHAPTER OF THE
FEDERAL BAR ASSOCIATION INVITES YOU TO
ITS ANNUAL DINNER

Date: December 2, 2000

Location: Hyatt Westshore Hotel, Courtney Campbell Causeway, Tampa, Florida

Cocktails: 6:00 p.m.

Dinner: 7:00 p.m.

Cost: $50.00

MAKE YOUR RESERVATION NOW.

PLEASE MAKE CHECK PAYABLE TO THE "FEDERAL BAR ASSOCIATION" AND MAIL IT TO EITHER:

Ken Lawson
400 North Tampa Street
Suite 3200
Tampa, FL 33601
Ph. (813) 274-6150

Jim Felman
Post Office Box 3396
Tampa, Florida 33601
Ph. (813) 229-1118

Reservations must be made by November 17, 2000.

THE OFFICERS AND DIRECTORS OF THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION 2000 - 2001

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The Tampa Bay Bankruptcy Bar Association
Committee Chairs For 2000-2001

The Association is looking for volunteers to assist us this coming 2000-2001 year. If you are interested in getting more involved with the Association or one of the Standing Committees, please contact any one of the Association officers or the Chairperson(s) listed below.

Committee	Chairs	Telephone	Facsimile
Membership and Election	John Olson	(813) 222-5048	(813) 222-5089
Meetings, Programs and Continuing Legal Education	Catherine Peek McEwen David M. Tong	(813) 223-7333 (813) 224-9000	(813) 223-2837 (813) 221-8811
Publications and Newsletters	John J. Lamoureux Michael C. Markham	(813) 223-7000 (727) 461-1818	(813) 229-4133 (727) 443-6548
Court, United States Trustee, and Clerk Liaisons	Cindy Burnette Scott Stichter	(813) 228-2000 (813) 229-0144	(813) 228-2303 (813) 229-1811
Long-Range Planning	Russell M. Blain	(813) 229-0144	(813) 229-1811
Computer Access/Technology	John J. Lamoureux	(813) 223-7000	(813) 229-4133
Community Service	Patrick R. Smith	(813) 871-3319	(813) 871-3616

The Tampa Bay Bankruptcy Bar Association would like to thank the following entities who have donated door prizes to the Association's monthly CLE lunches for the months of September and October. All members are encouraged to support and patronize the entities and our advertisers who support the Association.

Golf Passes
Tampa Sports Authority
Jeff Henderson
Director of Golf
4201 North Dale Mabry Highway
Tampa, Florida 33606
(813) 350-6500

Old Style Deli
110 East Madison Street
Tampa, Florida 33602
(813) 223-4282

The Tampa Bay Bankruptcy Bar Association ("TBBBA") wishes to express its appreciation to the following TBBBA members for their participation in its consumer bankruptcy pro bono referral program which will provide qualified pro se consumer debtors with much needed legal representation in various matters ranging from the defense of objections to discharge and/or dischargeability to the confirmation of a Chapter 13 plan:

Wanda Hagan Anthony Stichter, Reidel, et al	Larry M. Foyle Kass, Shuler, Solomon et al	Catherine Peek McEwen Akerman, Senterfitt, et al
Robert L. Barnes, Jr. Tew, Zinober, Barnes, et al	Michael P. Horan Ketchey & Horan	Harvey Paul Muslin
Steven Berman Morse, Berman & Gomez	F. Lorraine Jahn Solomon & Benedict	Thomas A. Nanna Feinberg, Isaak & Smith
Stephanie M. Biernacki Gray, Harris, Robinson et al	Joryn Jenkins	John K. Olson Stearns, Weaver et al
Charles H. Dittmar, Jr.	Lorien Smith Johnson Annis, Mitchell, et al	Patrick R. Smith Feinberg, Isaak & Smith
Timothy W. Gensmer	John J. Lamoureux Carlton, Fields, et al	Angela Stathopoulos Morse, Berman & Gomez
G. Donald Golden Feinberg, Isaak & Smith	Carol A. Lawson	David W. Steen McWhirter, Reeves, et al
Gretchen-Elizabeth	Dennis J. LeVine LeVine & Associates	Scott Alan Stichter Stichter, Reidel, et al
Lara Fernandez Gray, Harris, Robinson et al	D. Brett Marks LeVine & Associates	Roger Lee Waltemyer

It is the TBBBA's goal to compile an extensive listing of member attorneys from which the bankruptcy judges may refer in order to assign at least one pro se matter a year. However, we will need your help in order to make this concept a reality.

Based on the foregoing, in the event that you are interested in becoming involved this project in any capacity or simply would like additional details in order to further consider your participation, please provide the requested information on the reverse side and/or contact Patrick R. Smith at Feinberg, Isaak & Smith, P.A., P.O. Box 172239, Tampa, Florida, 33672-0239 or by telephone at (813) 229-2221, ext. 1216.

Thank you in advance for your anticipated cooperation.

Pro Bono Referral Program
Volunteer Sign-Up Sheet

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